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DEPT FOR L, PM, AND ISN

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SUBJECT: Convention on Certain Conventional Weapons (CCW) Meetings  
February 16-20, 2009

Ref. State 14138

Classified by: Stephen Mathias for reasons 1.4 (B) and (D)

#### Summary

1. (U) A U.S. delegation participated in the sixth round of negotiations on the issue of cluster munitions within the framework of the Convention on Certain Conventional Weapons (?CCW?), held February 16-20 in Geneva. This round of negotiations was almost entirely devoted to informal sessions organized by the new Chairman for the negotiations, Gustavo Ainchil of the Disarmament Directory of the Ministry of Foreign Affairs from Argentina. He presented informal ?elements? papers to organize the discussions, and on the basis of the feedback he received, prepared a new text which he distributed at the end of the session. The revised text distributed at the end of the session by the Chairman is generally acceptable from a U.S. perspective, although it contains some elements that will need to be modified. The new text and the elements papers were largely based on the text from the previous Chairman. The U.S. delegation also conducted numerous bilateral and small group meetings, including with Russia, India, Pakistan, China, Israel, South Korea, France, UK, Australia, Japan, Norway, Germany, the Czech Republic, Canada, and the ICRC. The next--and final scheduled--round of negotiations will be held April 14-17.

2. (U) The U.S. delegation worked to persuade both sides of the negotiation that a Protocol would be beneficial. With States that have signed the Oslo Convention, as well as the ICRC, the U.S. delegation argued that the humanitarian benefits that may be achievable in a new CCW protocol (and are reflected in the Chairman's draft) would be significant, and that this progress should be locked in. With countries that have been reluctant to agree to significant restrictions on cluster munitions, the U.S. delegation urged that they agree to as strong provisions as are possible consistent with their national security needs and noted that a successful result in the CCW would strengthen the argument for the use of this framework--which operates by consensus and seeks to balance military and humanitarian considerations--for issues that arise with respect to other conventional weapons. Significant specific issues that arose during the week are described below. End summary.

#### Technical improvements

3. (U) Much of the focus over the course of the week was on Article 4 in the draft text, which addresses the issue of technical improvements. There is general agreement that this article should prohibit, after a suitable transition period, the use, development, production, or acquisition of cluster munitions that do not meet certain technical criteria. The first set of criteria would require

that each submunition incorporate at least one of a list of safeguards to effectively ensure that unexploded submunitions no longer function as explosive submunitions. A second set of criteria would require States to ensure that, after dispersal, cluster munitions result in no more than 1% unexploded ordnance across the range of intended operational environments. (This second set of criteria essentially duplicates the DoD cluster munitions policy adopted in June.) With respect to the first set of criteria, delegations continued to misread the provision to require only the presence of one of the listed safeguards, ignoring the requirement that any incorporated safeguard work effectively. Accordingly, the U.S. delegation prepared an alternative text that highlights the real nature of the obligation, without changing it substantively. The delegation began informal consultations with other key delegations to see if this revised version might be helpful in moving the process forward. The delegation may share this version with the Chairman at a suitable stage.

14. (U) Three other significant issues arose with respect to the provisions on technical improvements. First, the Chairman raised the possibility of requiring the incorporation of two safeguards rather than one in the first set of criteria. Although a number of delegations spoke in favor of this change, it is clear that consensus will not be possible on this basis, and the U.S. delegation's informal discussions suggested that a number of other delegations participating in this discussion are not prepared to block consensus over this issue. Second, the Chairman raised the possibility of making the two sets of criteria cumulative rather than alternative requirements. Again, while some delegations expressed support for this, the U.S. delegation's discussions suggested that other delegations will not seriously insist on this approach. The revised text at the end of the week clearly makes the two sets of criteria alternatives. Third, a number of delegations expressed a strong preference for strengthening the language in both sets of criteria in Article 4 regarding accuracy. The U.S. delegation has prepared some language to address this concern and begun to share it informally with other key delegations.

#### Obligations during the transition period

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15. (U) There was considerable discussion about whether production of cluster munitions that do not meet the requirements in Article 4 should be permitted or not during the transition period. The U.S. delegation took the position that such production must be permitted to allow countries to ensure that their national security needs are met. However, a number of other delegations expressed concern that this would allow the unfettered production of the worst types of cluster munitions up until the very end of the transition period. The U.S. delegation considered two ideas for addressing this concern--(1) a general requirement that production of the weapons that do not meet the Article 4 requirements (i.e., for the U.S., weapons that do not meet the requirements of the DOD cluster munitions policy) be phased out over the course of the transition period, and (2) a requirement that production only be for purposes of replenishing stocks.

#### Destruction obligations

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16. (U) A number of delegations objected to the absence of a timeline for destruction of cluster munitions in the paper circulated by the Chairman. Some delegations called for specific deadlines. The U.S. delegation explained that this would be impossible for us to agree to a specific deadline given the size of the U.S. arsenal, as well as capacity and resource implications. Two ideas emerged as potential compromises. First, it might be possible to identify a starting date for destruction without identifying a time limit. This is the approach taken in the revised text circulated by the Chairman at the end of the session. Second, it might be possible to set forth reporting requirements on destruction without including a timeline. The U.S. delegation also noted that the destruction obligations should be made clearly subject to the transition period. No delegation objected to this approach.

#### Transfers

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17. (U) While a number of delegations made general statements about wanting to see more stringent limitations on transfers, no significant proposals were made to this effect. The U.S. delegation

did again make the point that the transfer article needed to be modified to clarify that it is subject to the transition period provided for in Article 4. No delegation objected to this point and the Chairman's revised draft included a separate transition period for transfers that the U.S. could accept.

#### International Humanitarian Law

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¶8. (U) The Chairman presented a draft paper containing suggested elements for an article on International Humanitarian Law (?IHL?). This draft included a few additional elements beyond those included in the previous Chairman's draft text. The new draft was generally acceptable, but included one paragraph that would prohibit the use of cluster munitions in concentrations of civilians, notwithstanding the fact that under some circumstances cluster munitions could actually cause less collateral damage than alternative munitions. In the discussions on this paper, the U.S. delegation reiterated our position that an article on IHL would be useful, but indicated that this one paragraph would have to be removed. The French delegation stated in informal consultations that they were opposed to the Chairman's draft elements paper. The ICRC, although they have in the past also opposed IHL text, told the Chairman that they could live with it. A number of delegations appear simply willing to follow the ICRC on this issue, making this a potentially significant development. Nevertheless, in his revised text distributed at the end of the session, the Chairman included only a general reference to IHL. He indicated to the U.S. delegation that he believes this concession to the Oslo countries is necessary to obtain their agreement on Article 4.

#### Treatment of the weapons excluded from the Oslo Convention

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¶9. (U) One problem that continues to threaten a successful outcome to these negotiations is that the French, British, and German delegations continue to oppose the idea that the cluster munitions excepted from the Oslo Convention should be subject to the same rules as the other categories of cluster munitions that would be permitted by a new Protocol. At no time have they been able to articulate a credible substantive objection to a single one of the obligations that this would impose (application of international humanitarian law, victims assistance, transfer restrictions, etc.). Instead, their goal appeared to be solely to maintain the special status that their exempted cluster munitions have under the Oslo Convention. The U.S. delegation made clear that the United States would not accept this approach. When pressed, the French Ambassador indicated that it might be possible for them to take on similar obligations with respect to their weapons outside of the context of the Protocol. The U.S. delegation prepared some language for their consideration to explore this idea, but it remains unclear whether an approach along these lines could provide a workable solution to the problem.

#### Way forward

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¶10. (C) The U.S. delegation's assessment remains that the countries with significant cluster munitions stockpiles (such as Russia, China, and India) will be willing to agree to a Protocol along the lines of the draft prepared by the Chairman. The Russian delegation in particular coordinated closely with the U.S. delegation and appeared ready to accept a text along the lines of the one proposed by the Chairman. It remains hard to tell whether one or more countries that have joined the Oslo Convention will block progress. Many of them remain very negative, but the Norwegian delegation informed the U.S. delegation that, while they will not support the Protocol, in the end they will not block consensus. The Canadian delegation, which has at times sounded like it was prepared to block, also seemed to indicate that they would not, even if they are dissatisfied with the ultimate result. Germany's position is less clear, however, and other delegations also might emerge that would be willing to block progress.

¶11. (C) On the other hand, some Oslo countries, such as Australia, the Czech Republic and Japan have thus far generally been supportive of a CCW Protocol along the lines of the draft the Chairman has prepared. The UK and France have been generally supportive of U.S. efforts to make progress here but have been non-committal about their final positions.

¶12. (C) A successful result in April is a realistic possibility but

by no means assured. Whether or not any country or countries will be prepared to block final agreement will not be clear until a final text emerges during the next negotiating session in April. It may be helpful to continue bilateral and multilateral contacts prior to the next session in April. With this in mind, the U.S. delegation approached a number of delegations suggesting videoconferences or other forms of communication during the intersessional period.

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